IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 582 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANKAJBHAI @ PUNJABHAI AYAR - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR LAXMANBHAI A AMAR for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR ZUBIN F BHARDA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/10/2007

ORAL JUDGMENT

1. In the present petition, the petitioner has prayed for quashing and setting aside Criminal Case No.2838 of 2003 pending before the learned Chief Judicial Magistrate First Class, Navsari.

2. Before examining the grievance of the petitioner, few facts leading to this petition may be noted. They are as follows.

2.1 Respondent No.2 had filed complaint bearing Criminal Misc. Application No.108 of 2001 before the learned Chief Judicial Magistrate First Class, Navsari on 16.10.2001. In the complaint, respondent No.2 has stated inter alia that he had purchased small quantity of gold from the petitioner on few occasions and the petitioner had by delivering the gold as promised, won over the confidence of the complainant. However, on 4.8.2000, the petitioner approached the complainant and inquired about certain quantity of gold to be supplied to the complainant. On that day, there was a talk between the complainant and the petitioner for supply of 140 Tola of gold costing Rs. 7 lacs. The complainant actually placed the order for supply of above quantity of gold and also paid a sum of Rs.7 Lac to the accused. However, thereafter, no gold was supplied and the accused had given evasive replies. Respondent No.2, therefore, lodged above referred complaint before Navsari Court. On 17.10.2001, the learned trial Judge ordered an inquire into the said complaint under

Section 202 of Criminal Procedure Code.

2.2. On 22.10.2001, respondent No.2 filed a complaint before the police on the same set of facts as revealed in his complaint before the learned Magistrate.

2.3. On 15.12.2001, the complainant filed pursis Exhibit 4 before the learned Magistrate stating that on account of changed circumstances, he is not interested in pursuing the complaint. On the said application Exhibit 4, the learned Magistrate passed his order on 15.12.2001 stating that "In view of Exhibit 4, this complaint is withdrawn by the complainant and complaint stands disposed of accordingly."

3. Present petition is filed by the original accused No.1 primarily on the ground that once the complainant withdrew his complaint from the learned Magistrate and such withdrawal was permitted, the accused should be deemed to have been acquitted of all the charges and therefore, it was not open for the complainant to file fresh complaint thereafter before the police on the very same set of facts.

3.1 The learned advocate Shri L.A. Amar appearing for the petitioner placed reliance on the provisions contained under Section 200,201,202

and 203 of Criminal Procedure Code, and submitted that the order passed by the learned Magistrate cannot be termed as one under Section 203 of Criminal Procedure Code and must be treated to have acquitted the petitioner.

4. Drawing my attention to the provisions contained under Section 301, 302 of Criminal Procedure Code, it is contended that since the, complainant had withdrawn the complaint, only conclusion possible is that the parties had arrived at a settlement and the learaned Magistrate is permitted compounding of the offences.

5. On the other hand, learned A.P.P. Shir Dipen Desai for the State as well as Shri Bharda, learned advocate for respondent No.2, original complainant opposed the petition and submitted that the order passed by the learned Magistrate on 5.12.2001 was not an order on merits acquitting the accused and therefore, it was open for the complainant to pursue the complaint before the police.

6. Reliance was placed on certain decisions of the Apex Court as well as this Court to which I shall refer at a later stage.

7. Having heard the learned advocates appearing for the parties, I

find having initially filed a complaint before the learned Magistrate on 16.10.2001, the complainant withdrew the same on 15.12.2001. However, in the meantime, he had filed complaint before the police on 22.10.2001. Though not specifically stated in his pursis Exhibit 4 that the complaint from the Court of the learned Magistrate is being withdrawn on account of pendency of the complaint before the police, no other interpretation of the statement made in the pursis Exhibit 4 is possible. The complainant stated that on account of changed circumstances, he is not desirous of pursuing the complaint before the learned Magistrate. Thus, this is not a case, where he had lodged a police complaint after his withdrawing unconditionally the complaint from the learned Magistrate. Police complaint was filed before withdrawal of complaint from the Magistrate. Additionally, I also find that under no circumstances, the order passed by the learned Magistrate on 15.12.2001 disposing the complaint can be treated an acquittal on merits. Undoubtedly the trial was not conducted, evidence was not recorded, findings of fact not reached. In view of the matter, it was open for the complainant to pursue his complaint before the police despite withdrawal of earlier complaint lodged before the Magistrate for the same offence.

8. In the case of **Devarapalli Lakisminarayana Reddy and Others Vs. Narayana Reddy and Others** reported in **AIR 1976** Supreme Court

1672, the Apex Court observed as follows :

> "In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceedings; but only for ordering an investigation under Section 156 (3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200, Cr.P.C., which is the first step in the procedure prescribed under that Chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. In stead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under S.156."

9. In the case **Jatinder Singh and Ors. Vs. Ranjit Kaur** reported in 2001 (1) GLH 737, the Apex Court held that it was open for the complainant wife to file fresh complaint, even after her complaint was dismissed for default observing that since her complaint was not dismissed on merits, there was no reason to shut doors of the justice once and for all.

10. In the case of **Mahesh Chand V. B. Janardhan Reddy and Anr. 2003 (1) SCC 734,** the Apex Court has taken into consideration several decisions of the High Courts as well as Hon'ble Supreme Court and observed in para 19 that " Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the

second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts."

11. In the result, the petition is dismissed. Rule is discharged. Interim relief stands vacated.

(AKIL KURESHI, J.)

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